



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.12.2016

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P (MD) No.12 of 2014 (PD)
and
M.P (MD) 1 of 2014

K.ThakshinamurthyPetitioner/Petitioner/1st Defendant
Vs.

The Branch Manager,
State Bank of India,
Arasaradi Branch,
Madurai.

....Respondent/Respondent/Plaintiff

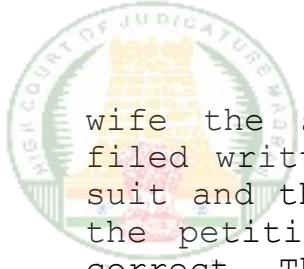
PRAYER: Civil Revision Petition is filed, under Section 115 Code of Civil Procedure, against the order of dismissal, dated 12.06.2013 in I.A.No.425 of 2011 in O.S.No.257 of 2004 on the file of the Learned VI Additional District Judge, Madurai.

For Petitioner : Mr.K.Thakshinamurthy
Party-in-person
For Respondent : Mr.D.Nalla Thambi for
Mr.V.Meenakshi Sundaram

ORDER

The petitioner has filed this Civil Revision Petition against the order of dismissal, dated 12.06.2013 in I.A.No.425 of 2011 in O.S.No.257 of 2004 passed by the Learned VI Additional District Judge, Madurai.

2.The petitioner is the first defendant. The respondent is the plaintiff. The respondent filed a suit in O.S.No.257 of 2004 before the VI Additional District Court, Madurai, for recovery of sum of Rs.2,67,32,692.27/- against the petitioner and two others. The petitioner and second defendant are husband and wife. Both engaged separate Advocate and filed written statement. Subsequently, they did not contest the suit. An ex-parte decree was passed on 30.06.2009. The respondent filed Execution Petition in E.P.No.102 of 2011 for recovery of money as per the decree for sale of the properties mentioned therein. The petitioner filed I.A.No.425 of 2010 to condone the delay of 452 days in filing the petition to set aside the ex-parte decree. According to the petitioner, there is a delay of 590 days, at that time he was in judicial custody and therefore, he was not aware of the ex-parte decree. The respondent filed counter affidavit and submitted that the petitioner and his

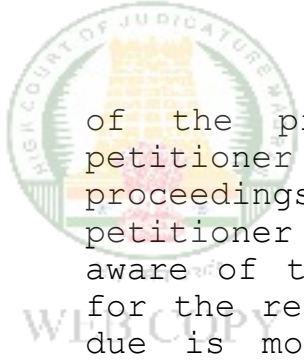


wife the second defendant were represented through Advocate and filed written statement and subsequently, they did not contest the suit and therefore, ex-parte decree was passed. The reason given by the petitioner that he did not know the ex-parte decree, is not correct. The second defendant, who is his wife knew about the ex-parte decree. The petitioner was produced before the Execution Court in the E.P.No.102 of 2011 on 23.1.2012. The petitioner and his wife filed vakalat in the said E.P., subsequently, they did not file any counter in the E.P., also and therefore, prayed for dismissal of the petition to condone the delay in filing the petition to set aside ex-parte decree.

3.The learned Judge considering the averments made in the affidavit and counter affidavit, dismissed the application holding that the reason given by the petitioner that he was in judicial custody and therefore, he was not aware of the ex-parte decree, is not valid reason for condoning the delay as he and his wife the second defendant were represented through counsel and also held that the Execution Petition is in the final stage and therefore, present application is not maintainable and devoid of merits. Against the said order of dismissal, the petitioner has filed the present Civil Revision Petition.

4.Mr.K.Thakshinamurthy, party-in-person submitted that he was in judicial custody from 27.12.2002 to 14.10.2014. Only on 14.10.2014 he was released. In the year 2010 he has written a letter to the Additional District and Sessions Judge, FTC-III, Madurai with regard to pendency of the suit. By the proceedings dated 22.12.2010 the Additional District and Sessions Judge, FTC-III, Madurai has informed the petitioner to file a petition to set aside the ex-parte decree. Immediately, he filed a petition to set aside the ex-parte decree with condonation of delay. Engaging an Advocate will not amount to knowing the stage of the suit and orders passed therein. To substantiate his claim, he relied on the judgment reported in **AIR 1981 Supreme Court 1400 Lajpat Rai v. State of Punjab.**

5.Per contra, the learned counsel for the respondent submitted that the petitioner while working as Manager in the respondent Bank misappropriated huge amounts and purchased the properties in the name of his wife, who is the second defendant in the suit. Therefore, the respondent initiated several proceedings against the petitioner and third defendant and filed suit for recovery of money against the petitioner and his wife and Venkatesh employee of the Bank. The petitioner and his wife engaged separate Advocate and filed Vakalat. Subsequently, they did not contest the suit and an ex-parte decree was passed on 30.06.2009. The petitioner filed application to condonation of delay of 452 days on 18.02.2011. The respondent has filed E.P.No.102 of 2011. The petitioner was produced before the Execution Court on 23.01.2012. The second defendant, who is the wife of the petitioner, filed vakalat on 15.03.2012 and subsequently, did not contest. In the Execution proceedings, on 06.07.2012 sale was ordered with regard to 38 items



of the properties. Number of cases are pending against the petitioner and he appeared before this Court and in other proceedings also. In the circumstances, the reason given by the petitioner that he was in judicial custody and therefore, he was not aware of the ex-parte decree, is not correct. The learned counsel for the respondent also submitted that as on today the outstanding due is more than 10 crores and prayed for dismissal of Civil Revision Petition.

6.I have heard the petitioner/party-in-person and the learned counsel appearing for the respondent and also perused the entire materials on record.

7. The contention of the petitioner to condone the delay is that, he is not aware of the ex-parte decree, due to the reason that he was in judicial custody from 27.12.2002. The petitioner written a letter to the Additional District & Sessions Judge, FTC-III, Madurai and the Additional District & Sessions Judge, FTC-III, Madurai informed him that he has to file petition to set aside the ex-parte decree. Only when the Judge informed him he came to know about the ex-parte decree and he filed a petition to condone the delay in filing the petition set aside the ex-parte decree. The reason given by the petitioner is not acceptable as he has engaged an Advocate and his wife second defendant was aware of the proceedings through out. Further, the application to condone the delay was dismissed for default and subsequently, on application by the petitioner, it was restored. In view of the fact that his wife also a party to the suit, the Judgment relied on by the petitioner is not applicable to the facts of the present case. Execution Petition has been filed by the respondent for recovery of Rs.5,65,49,440/- and the sale of 38 properties had been ordered. In the circumstances, the reason given by the petitioner is not valid, the learned Judge has exercised his jurisdiction in proper perspective and there is no illegality or irregularity warranting interference by this Court.

8.In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar

To
The VI Additional District Judge,
Madurai.

+1 cc to Mr. K.THAKSHINA MURTHY,ADVOCATE,SR NO.82686

+1 cc to Mr. D.NALLTHAMBI,ADVOCATE, SR NO.83069

Am

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